In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 906

ALFRED GRASSIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted upon his plea of *nolo contendere* to one count of a two-count indictment charging him with violating 26 U.S.C. 7203 by willfully failing to purchase the occupational tax stamp required by 26 U.S.C. 4411 and by willfully failing to register as required by § 4412. He was sentenced to imprisonment for four months and fined $2,500. The second count was dismissed on the government's motion.

Petitioner was one of approximately forty-five individuals arrested on October [redacted], 1964, in connection with a coordinated campaign against violators of the Wagering Tax Statute in the Bridgeport, Connecti-

cut area. He challenges the constitutionality of the statute when measured against the Fifth and Tenth Amendments, advancing contentions which are the same as those raised in the petition filed this term by James Marchetti (No. 823), Frank Costello (No. 826), and Arthur Gjanci (No. 1028 Misc.). Those contentions are answered by our combined brief in response to the cited petitions. See, also, *United States* v. *Angelini*, 346 F. 2d 278 (C.A. 7), certiorari denied, 382 U.S. 838.

Additionally, he claims that he is entitled to a dismissal of his indictment because of allegedly prejudicial pretrial publicity which he asserts was generated by both the government and the trial court. The publicity attributed to the government arose from a press release issued contemporaneously with the arrests, in which petitioner—unlike Marchetti, Costello and Gjanci (See Brief for the United States in Opposition, Nos. 823, 826, and 1028 Misc., this Term, p. 8)—was not mentioned by name. The publicity attributed to the trial court arose from a public statement by the Chief Judge subsequent to the trials of most of the defendants, but prior to the date set for petitioner's trial, in which the judge inveighed against the evils of gambling and praised the Revenue Service agents for their efforts in enforcing the Wagering Tax Statute.

Petitioner, unlike the other defendants, moved for and was granted a change of venue to Hartford, which was removed from the center of the publicity. When his case was called, he moved for a dismissal

and, in the alternative, for a continuance, both of which were denied. He then pleaded *nolo contendere*, but indicated his intention of appealing from the judgment entered.

Petitioner's contentions on this point do not survive his plea. He can hardly claim that a fair trial was impossible at the time and place set when, by his plea, he foreclosed all opportunity to determine whether one could be had. He was clearly not entitled to dismissal of the indictment. It cannot be said as a matter of law that the prejudicial effect of publicity is "so permanent, and ineradicable by mere lapse of time, that the court should have recognized the impossibility of a fair trial ever being held at any time within the foreseeable future." *Delaney* v. *United States*, 199 F. 2d 107, 112 (C.A. 1); *Harney* v. *United States*, 306 F. 2d 523, 532, n. 4 (C.A. 1), certiorari denied *sub nom. O'Connell* v. *United States*, 371 U.S. 911.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FEBRUARY 1966.

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